

REMARKS/ARGUMENTS

Claims 1, 3, 4, 6, 8, 9, 10, 11, 18, 20, 21 and 23 are presently pending. Claims 3, 10, 18 and 21 have been amended solely to expedite prosecution without prejudice or disclaimer. Claims 16, 17 and 19 remain withdrawn with the expectation of rejoinder upon allowance of claim 1. *No new matter has been added.*

Moreover, amendment and/or cancellation of the claims during pendency of the application are not to be construed as acquiescence to any of the objections/rejections set forth in any Office Action, and were done solely to expedite prosecution of the application. Applicants submit that claims were not added or amended during prosecution of the instant application for reasons related to patentability. Applicants reserve the right to pursue the claims as originally filed, subsequently amended or added, or similar claims, in this or one or more subsequent applications.

Claim Rejection – 35 USC 112 Second Paragraph

The Examiner has rejected claim 18 because it contains the limitation of “converting a compound of the formula (I) into another compound of formula (I)” and the step of “removing any protecting group”. Applicants have deleted both these phrases from the claim and kindly request that the Examiner withdraw this rejection.

Claim Rejections under 35 USC §103

The Examiner has rejected claims 1, 3, 4, 6, 8, 9, 11, 18, 20 and 21 being unpatentable over Mortlock *et al.* (WO01/215971) in view of Wang *et al.* (WO03/000188). The Examiner has suggested that Mortlock *et al.* differs from the instant compound by not having a phosphonoxy group as a substituent on the alkyl groups corresponding to the instant R¹ and R² and that this difference can be overcome by the teaching of Wang *et al.* In particular, the Examiner has suggested that it would have been obvious to one of ordinary skill in the art to modify the Mortlock's compounds by adding a phosphonoxy group as taught by Wang *et al.*

Applicants respectfully traverse this rejection and assert that the Examiner has not met the burden of establishing a *prima facie* case of obviousness. MPEP 2144.08 provides that

[t]o establish a *prima facie* case of obviousness in a genus-species chemical composition situation, as in any other 35 U.S.C. 103 case, it is essential that

Office personnel find some motivation or suggestion to make the claimed invention in light of the prior art teachings. See, e.g., *In re Brouwer*, 77 F.3d 422, 425, 37 USPQ2d 1663, 1666 (Fed. Cir. 1996) ("[T]he mere possibility that one of the esters or the active methylene group-containing compounds... ***could be modified*** or replaced such that its use would lead to the specific sulfoalkylated resin recited in claim 8 ***does not make the process recited in claim 8 obvious 'unless the prior art suggested the desirability of [such a] modification' or replacement.***") (quoting *In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984)); *In re Vaeck*, 947 F.2d 488, 493, 20 USPQ2d 1438, 1442 (Fed. Cir. 1991) ("[A] proper analysis under § 103 requires, *inter alia*, consideration of... whether the prior art would have suggested to those of ordinary skill in the art that they ***should*** make the claimed composition or device, or carry out the claimed process.").
[Emphasis added]

The mere possibility that the alkyl groups corresponding to the instant R¹ and R² could have been modified or replaced to incorporate phosphonoxy groups does not make the invention obvious unless the prior art suggested the desirability of such a modification or replacement.

There is nothing in Mortlock that suggests alternative compounds are required or desired, and thus nothing that would prompt the skilled artisan to consider modifying with a phosphonoxy group. The skilled artisan would consequently have no reason to consult Wang. As Mortlock does not in itself provide any suggestion or motivation to make the claimed invention and would not cause the skilled person to consult Wang (nor does Wang suggest to the skilled artisan to consult Mortlock), Applicants contend that the standard for a prima facie case of obviousness set out in MPEP 2144.08 has not been satisfied.

Even assuming for the sake of argument that the ordinarily skilled artisan did have reason to consult Wang, Wang does not specifically disclose a phosphonoxy group. Numerous phosphorus containing moieties are contemplated but Applicants cannot find a specific disclosure of phosphonoxy i.e. $-\text{OP}(\text{O})(\text{OH})_2$. Of the many compounds disclosed by Wang, none contain a phosphonoxy group. Consequently if the skilled artisan did consult Wang, he would not find aniline-quinazoline compounds bearing a phosphonoxy group (as there are none) and so could not be motivated to modify Mortlock to arrive at the claimed invention.

Applicants therefore contend that there is no prima facie case of obviousness because:

1. Based on Mortlock, the skilled artisan would have no motivation to consult Wang;
and
2. Even if Wang was consulted, Wang does not specifically teach a phosphonoxy group.

Accordingly, Applicant respectfully request withdrawal of the rejection of claims 1, 3, 4, 6, 8, 9, 11, 18, 20 and 21 as being unpatentable over Mortlock *et al.* in view of Wang *et al.* and favorable reconsideration.

Claim Objections

Claim 3 has been amended to make it dependent on claim 1 to overcome the Examiner's objection.

Species having A as pyrimidinyl have been deleted from claim 10 to overcome the Examiner's objection.

Please also note that Applicants have also amended claim 21. The phrase "**R**¹ is C₁₋₅alkyl substituted by phosphonoxy;" was mistakenly deleted from claim 21 in response to the restriction requirement. Applicants respectfully request that this phrase be reinstated.

CONCLUSIONS

Applicants believe the application is in condition for allowance, which action is respectfully requested.

A petition for a two months extension of time is being filed herewith, the Commissioner is hereby authorized to charge any deficiency in the fees or credit any overpayment to deposit account No. 50-3231, referencing Attorney Docket No. 100936-1P US.

Although Applicants believe no excess claim fees are due, the Commissioner is hereby authorized to charge any deficiency in the fees or credit any overpayment to deposit account No. 50-3231, referencing Attorney Docket No. 100936-1P US.

Respectfully submitted,
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